

E. Michael Garrett, Jr., Esq. (8913)
BARRETT LAZAR, LLC
145 West Passaic Street
Maywood, New Jersey 07607
Tel.: 201-843-5900
Attorneys for Defendants,
Russell B. Tinsley and Downey Trucking, Inc.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

-----X

EWA K. WIERDAK and LUKE J.
McCARTNEY, her husband,

Civil Action No.

Plaintiffs,

vs.

RUSSEL B. TINSLEY, DOWNEY
TRUCKING, INC., JOHN DOE
1-X, ABC CORP., 1-X (fictitious names as
entities are presently unknown),

**NOTICE OF FILING OF NOTICE
OF REMOVAL**

Defendants.

-----X

TO: Joseph M. Simantov, Esq.
The Simantov Law Firm, P.C.
100 Jefferson Avenue, 3rd Floor
Elizabeth, New Jersey 07201
Attorneys for Plaintiffs

S I R S:

PLEASE TAKE NOTICE, that defendants, Russell B. Tinsley and Downey Trucking, Inc., in the above-entitled action, have on this 15th day of January, 2019, removed this action to the Newark Vicinage of the United States District Court for the District of New Jersey, by filing a Notice of Removal, a copy of which is annexed hereto, in the Office of the Clerk of the United States District Court for the District of New Jersey, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07101, and in the Office of the Clerk of the

Superior Court of New Jersey, County of Hudson, at 595 Newark Avenue, Jersey City, New Jersey 07306.

BARRETT LAZAR, LLC
Attorneys for Defendants,
Russell B. Tinsley and Downey Trucking, Inc.

By:

A handwritten signature in black ink, appearing to read "E. Michael Garrett, Jr.", written over a horizontal line.

E. Michael Garrett, Jr., Esq. (8913)

Dated: January 15, 2019

E. Michael Garrett, Jr., Esq. (8913)
BARRETT LAZAR, LLC
145 West Passaic Street
Maywood, New Jersey 07607
Tel.: 201-843-5900
Attorneys for Defendants,
Russell B. Tinsley and Downey Trucking, Inc.

-----X
EWA K. WIERDAK and LUKE J.
McCARTNEY, her husband,

Plaintiffs,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : HUDSON COUNTY
DOCKET NUMBER: HUD-L-4999-18

CIVIL ACTION

vs.

RUSSEL B. TINSLEY, DOWNEY
TRUCKING, INC., JOHN DOE
1-X, ABC CORP., 1-X (fictitious names as
entities are presently unknown),

NOTICE OF REMOVAL

Defendants.

-----X

Pursuant to 28 U.S.C. Sections 1441 and 1446, defendants, Russell B. Tinsley and Downey Trucking, Inc., hereby remove this action from the Superior Court of the State of New Jersey, County of Hudson, Docket No. HUD-4999-18, to the Newark Vicinage - United States District Court for the District of New Jersey.

1. This Court has original jurisdiction over this action, pursuant to 28 U.S.C. Section 1332, on the ground that there is diversity of citizenship between the parties and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

2. Plaintiffs, Ewa K. Wierdak and her husband Luke J. McCartney, reside at 90 Columbia Avenue, City of Jersey City, County of Hudson and State of New Jersey.

3. Plaintiff commenced this action by filing a Complaint, dated December 18, 2018, in the Superior Court of the State of New Jersey, County of Hudson, against defendants, Russell B. Tinsley and Downey Trucking, Inc. A Summons and Complaint was served on defendant,

Downey Trucking, Inc., via personal service, on or about January 7, 2019. The driver, defendant Russel B. Tinsley, has not been served as of this date. (See copy of the Summons and Complaint, annexed hereto as **Exhibit "A."**)

4. Defendant, Downey Trucking, Inc. is incorporated in the State of Kentucky and has its corporate headquarters and principal place of business located at 1346 West Main Street, Auburn, Kentucky 42206. (See Downey Trucking, Inc.'s Corporate Annual Report dated April 23, 2018, annexed hereto as **Exhibit "B"**). Russel B. Tinsley resides at 607 E. Cedar Street, Franklin, Kentucky 42134. (See Police Report annexed hereto as **Exhibit "C"**).

5. The Complaint (Exhibit "A") alleges that plaintiff, Ewa K. Wierdak sustained personal injuries resulting from defendants' alleged negligence, carelessness and recklessness. This accident occurred northbound on the Route 1 & 9 ramp in Jersey City, New Jersey on December 19, 2016.

6. Upon information and belief, plaintiff, Ewa K. Wierdak, sustained damages which exceed \$75,000.00. Based on the foregoing allegations and claims, this action is one in which the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs. Therefore, this action is removable under 28 U.S.C. Section 1441(a), as one over which this Honorable Court has original jurisdiction pursuant to 28 U.S.C. Section 1332(a).

7. Defendant, Downey Trucking, Inc. was served, via personal service, on January 7, 2019. Defendant Russel B. Tinsley has not been served nor has he received suit papers as of this date.

8. This Notice of Removal is filed within thirty (30) days of defendant's receipt of the Complaint, by service or otherwise, and is, therefore, timely filed pursuant to 28 U.S.C. Section 1446(b).

9. Written notice of the filing of this Notice of Removal has been served on plaintiff's counsel and a copy of this Notice has been forwarded for filing with the Office of the Clerk of the Superior Court of the State of New Jersey, County of Hudson, at 595 Newark Avenue, Jersey City, New Jersey 07306, to effect the removal of this action to the United States District Court, pursuant to 28 U.S.C. Section 1446(d).

WHEREFORE, defendants, Russell B. Tinsley and Downey Trucking, Inc., request that the matter be removed from the Superior Court of the State of New Jersey, County of Hudson, to this Honorable Court.

BARRETT LAZAR, LLC
Attorneys for Defendants
Russell B. Tinsley and Downey Trucking, Inc.

By:



E. Michael Garrett, Jr., Esq. (8913)

Dated: January 15, 2019

Exhibit A

Received:

Jan 3 2019 05:03pm

Joseph M. Simantov, Esq.
NJ Bar #040062003

The Simantov Law Firm, P.C.
100 Jefferson Ave., 3rd Floor
Elizabeth, NJ 07201
(908) 469-6700

Attorneys for Plaintiff - Ewa K. Wierdak and Luke J. McCartney

EWA K. WIERDAK AND LUKE J.
McCARTNEY, her husband

Plaintiff,

v.

RUSSEL B. TINSLEY, DOWNEY
TRUCKING, INC., JOHN DOE 1-X, ABC
CORP. 1-X (fictitious names as entities are
presently unknown),

Defendant(s).

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUDSON COUNTY
Docket No.: HUD-L-

Civil Action

COMPLAINT AND JURY DEMAND

Plaintiffs, Ewa K. Wierdak and Luke J. McCartney, husband and wife residing at 90 Columbia Avenue, in the City of Jersey City, County of Hudson and State of New Jersey, by way of their complaint against the defendants, Russel B. Tinsley, Downey Trucking, Inc., John Doe and ABC Corp., alleges the following:

FIRST COUNT

1. On or about December 19, 2016, Plaintiff, Ewa K. Wierdak, was the operator of an automobile traveling North on the Route 1 & 9 ramp in the City of Jersey City, County of Hudson and State of New Jersey, when the vehicle owned by defendant, Downey Trucking, Inc. and operated by defendant Russel B. Tinsley, also traveling north on the Route 1 & 9 ramp in the City of Jersey City, County of Hudson and State of New Jersey, swung his vehicle into plaintiff's lane, causing a collision between the vehicles.
2. The defendant, Russel B. Tinsley operated his vehicle in a negligent, careless and reckless manner in that the defendant failed to make proper observation of traffic conditions and/or traffic markings; to keep his vehicles under control; to maintain proper speed and distance between vehicles; to make use of his vehicles' braking mechanisms; and, to otherwise drive with reasonable and due care under the circumstances.
3. As a direct and proximate result of the negligence of the defendants, plaintiff suffered severe and permanent bodily injuries, suffered great pain, was forced to seek medical aid and attention, was prevented from attending to usual and customary business and employment and/or other activities, and has been left with permanent disabilities that will in

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Jan 3 2019 05:03pm

the future cause pain, require medical treatment, and will in the future incapacitate plaintiff and otherwise cause plaintiff to suffer.

WHEREFORE, plaintiff demands judgment against the defendants, Russel B. Tinsley, Downey Trucking, Inc., John Doe and ABC Corp., individually, jointly and/or severally, for damages together with interest, costs of suit, attorney's fees and such other and further relief as this Court may deem equitable, proper and just.

SECOND COUNT

1. The Plaintiff, Luke J. McCartney, repeats each and every allegation of the First Count as if same were set forth herein at length.

2. On the aforementioned date and place, the plaintiff, Luke J. McCartney, was and is still the husband of the plaintiff, Ewa K. Wierdak, and as such is entitled to her services, society, companionship and attention, and by reason of the injuries sustained by plaintiff, Ewa K. Wierdak, this plaintiff, was deprived of her services, society and companionship and will and will be obliged to provide for her medical care and attention for the rest of plaintiff, Ewa Wierdak's life.

WHEREFORE, plaintiff, Luke J. McCartney, demands judgment on this count against the defendants for damages together with interest and cost of suit.

JURY DEMAND

Plaintiffs demand trial by jury as to all issues.



Joseph M. Simantov, Esq.
The Simantov Law Firm, PC

Dated: December 18, 2018

TRIAL ATTORNEY DESIGNATION

Pursuant to the Rules of Court the plaintiff hereby designates Joseph M. Simantov, Esq. as trial counsel in this matter.



Joseph M. Simantov, Esq.

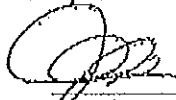
Dated: December 18, 2018

Received:

Jan 3 2019 06:03am

CERTIFICATION PURSUANT TO R. 4:5-1

Pursuant to Rule 4:5-1, the undersigned certifies that to the best of his knowledge, the within matters in controversy are not the subject of any other action pending in any other Court or of a pending arbitration proceeding nor is any action or arbitration proceeding contemplated nor are other parties required to be joined in this action.



Joseph M. Simantov, Esq.
The Simantov Law Firm, PC

Dated: December 18, 2018

Received:

Jan 3 2019 05:03pm

Joseph M. Simantov, Esq.
NJ Bar #040062003
The Simantov Law Firm, P.C.
100 Jefferson Ave., 3rd Floor
Elizabeth, NJ 07201
(908) 469-6700

Attorneys for Plaintiff: Ewa K. Wierdak and Luke J. McCartney

EWAK. WIERDAK AND LUKE J.
McCARTNEY, her husband

Plaintiff,

v.

RUSSEL B. TINSLEY, DOWNEY
TRUCKING, INC., JOHN DOE 1-X, ABC
CORP. 1-X (fictitious names as entities are
presently unknown),

Defendant(s).

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUDSON COUNTY
Docket No.: HUD-L-4999-18

Civil Action

Summons

From The State of New Jersey, To The Defendant Named: *Downey Trucking, Inc.*
1346 West Main Street
Auburn, KY 42206

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The Complaint attached to this Summons states the basis for this lawsuit. If you dispute this Complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court on the county listed above within 35 days from the date you received this Summons, not counting the date you received it. (The address of each deputy clerk of the Superior Court is provided). A \$135.00 filing fee payable to the Clerk of the Superior Court and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your Answer or Motion when it is filed. You must also send a copy of your Answer or Motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written Answer or Motion (with fee and completed Case Information Statement) if you want the Court to hear your defense.

If you do not file and serve a written Answer or Motion within 35 days, the Court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services Office in the county where you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

Dated:

/s/ Michelle M. Smith
Michelle M. Smith
Superior Court Clerk

Exhibit B

Commonwealth of Kentucky
Alison Lundergan Grimes, Secretary of State

PARP
0274495
 Alison Lundergan Grimes
 KY Secretary of State
 Received and Filed
 4/23/2018 3:14:27 PM
 Fee receipt: \$15.00

Alison Lundergan Grimes
 Secretary of State
 P. O. Box 1150
 Frankfort, KY 40602-1150
 (502) 564-3490
<http://www.sos.ky.gov>

**Annual Report
 Online Filing**

ARP

Company: DOWNEY TRUCKING, INC.
Company ID: 0274495
State of origin: Kentucky
Formation date: 6/27/1990 12:00:00 AM
Date filed: 4/23/2018 3:14:27 PM
Fee: \$15.00

Principal Office

P.O. BOX 722
 AUBURN, KY 42206

Registered Agent Name/Address

JAMES DOWNEY
 1346 WEST MAIN ST
 AUBURN, KY 42206

Current Officers

President	James L Downey	P.O. Box 722 Auburn, KY 42206
Secretary	Donna K Downey	P.O. Box 722 Auburn, KY 42006
Treasurer	Donna K Downey	P.O. Box 722 Auburn, KY 42206
Vice President	James L Downey	P.O. Box 722 Auburn, KY 42206

Directors

Director	James Leland Downey	P.O. Box 722 Auburn, KY 42206
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County:	Logan
Business size:	Small
Ownership:	- Veteran-owned
Business type:	Motor Freight Transportation

Signatures

Signature	JAMES DOWNEY
Title	President

Exhibit C

Jan. 4, 2017 8:56AM		New Jersey Police Crash Investigation Report		No. 1446 P. 3																																																																																											
1 Case Number 16-30158		10 Crash Occurred On: Route 1-9 RAMP IN		11 Speed Limit 30/58/16																																																																																											
2 Police Dept. Jersey City 01		12 Hours Mo. 01		13 Milepost 15																																																																																											
3 Station/Preced. North		14		15																																																																																											
4 Date of Crash 1/2/17		5 Day of Week Tu W		6 Time (use 2400 hrs) 11:16																																																																																											
7 Municipality Code 0906		8 Total KTD 1		9 Total Injured 1																																																																																											
23 Veh No 24 Policy No. A0004023002		25 Ins Code 25460		26 Veh No 27 Policy No. 4422-18-46-73																																																																																											
28 Driver's First Name Russel B. Tinsley		29 Sex M		30 Eyes BRN																																																																																											
31 State KY		32 Driver's License No. [REDACTED]		33 DOB 10/16/62																																																																																											
34 State NJ		35 Driver's License No. [REDACTED]		36 DOB 01/30/77																																																																																											
37 Owner's First Name Downey		38 Owner's Last Name Trucking, Inc		39 Owner's First Name Hyundai Leasing																																																																																											
40 Owner's Last Name Tinsley Trust		41 Owner's First Name [REDACTED]		42 Owner's Last Name [REDACTED]																																																																																											
43 Number and Street 1346 West Main Street		44 City Auburn		45 State KY																																																																																											
46 Number and Street 4000 MacArthur Blvd		47 City Newport BCH		48 State CA																																																																																											
49 Make KW		50 Model TT		51 Color WT																																																																																											
52 Make KIA		53 Model Wagon		54 Color BK																																																																																											
55 VIN 1XKYD P9XDF 5452490		56 VIN KNDPNCAC7H7139474		57 VIN [REDACTED]																																																																																											
58 Vehicle Removed To [X] Driven [] Loan at Scene [] Towed []		59 Vehicle Removed To [X] Driven [] Loan at Scene [] Towed []		60 Vehicle Removed To [X] Driven [] Loan at Scene [] Towed []																																																																																											
61 Alcohol/Drug Test Given: [] No [] Yes [] Refused		62 Alcohol/Drug Test Given: [] No [] Yes [] Refused		63 Alcohol/Drug Test Given: [] No [] Yes [] Refused																																																																																											
64 Hazardous Material On Board []		65 Hazardous Material On Board []		66 Hazardous Material On Board []																																																																																											
67 Center No. 0564750		68 Center No. [REDACTED]		69 Center No. [REDACTED]																																																																																											
70 Commercial Vehicle Weight [] 10,000 lbs [] 10,001-28,000 lbs [] 28,001 lbs		71 Commercial Vehicle Weight [] 10,000 lbs [] 10,001-28,000 lbs [] 28,001 lbs		72 Commercial Vehicle Weight [] 10,000 lbs [] 10,001-28,000 lbs [] 28,001 lbs																																																																																											
73 Carrier Name Kentucky Transport		74 Carrier Name [REDACTED]		75 Carrier Name [REDACTED]																																																																																											
<p>134 Crash Diagram (NOT TO SCALE)</p>																																																																																															
<p>135 Crash Description: Driver of Veh #1 stated he was traveling N on 1-9 making his way onto the 1-9 entrance ramp when he suddenly heard a collision on the right side of his rear trailer. Driver of Veh #2 at no point said he did not see the two vehicles that struck his trailer. Driver of Veh #3 stated she was traveling N on 1-9 entering the ramp on 1-9 when suddenly the driver of Veh #1 swung his trailer into her lane causing her to get hit on the driver side rear end forced her into Veh #2. Driver of Veh #2 had two young children in rear of vehicle who were seen by ambulance. Bls 300 Rtn 04/15/16</p>																																																																																															
141 Officer's Signature P. P. [REDACTED]		142 Badge No. 3025		143 Reviewed By [REDACTED]																																																																																											
144 Case Status [] Pending [] Complete		145 Case Status [] Pending [] Complete		146 Case Status [] Pending [] Complete																																																																																											
<table border="1"> <thead> <tr> <th></th> <th>83</th> <th>84</th> <th>85</th> <th>86</th> <th>87</th> <th>88</th> <th>89</th> <th>90</th> <th>91</th> <th>92</th> <th>93</th> <th>94</th> <th>95</th> <th>Names & Addresses of Occupants - If Deceased, Date & Time of Death</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>V1</td> <td>01</td> <td>01</td> <td>-</td> <td>54</td> <td>M</td> <td>-</td> <td>-</td> <td>1</td> <td>04</td> <td>04</td> <td>-</td> <td>-</td> <td>Driver of Veh #1</td> </tr> <tr> <td>B</td> <td>V2</td> <td>01</td> <td>01</td> <td>-</td> <td>39</td> <td>F</td> <td>-</td> <td>-</td> <td>1</td> <td>04</td> <td>04</td> <td>-</td> <td>-</td> <td>Driver of Veh #2</td> </tr> <tr> <td>C</td> <td>V2</td> <td>04</td> <td>01</td> <td>-</td> <td>13</td> <td>M</td> <td>-</td> <td>-</td> <td>2</td> <td>04</td> <td>04</td> <td>-</td> <td>-</td> <td>Brian Wierdak - 90 Columbia Ave Jersey City NJ 07307</td> </tr> <tr> <td>D</td> <td>V2</td> <td>06</td> <td>01</td> <td>-</td> <td>8</td> <td>M</td> <td>-</td> <td>-</td> <td>2</td> <td>05</td> <td>05</td> <td>-</td> <td>-</td> <td>Gina McCartney - 90 Columbia Ave Jersey City NJ 07307</td> </tr> <tr> <td>E</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>							83	84	85	86	87	88	89	90	91	92	93	94	95	Names & Addresses of Occupants - If Deceased, Date & Time of Death	A	V1	01	01	-	54	M	-	-	1	04	04	-	-	Driver of Veh #1	B	V2	01	01	-	39	F	-	-	1	04	04	-	-	Driver of Veh #2	C	V2	04	01	-	13	M	-	-	2	04	04	-	-	Brian Wierdak - 90 Columbia Ave Jersey City NJ 07307	D	V2	06	01	-	8	M	-	-	2	05	05	-	-	Gina McCartney - 90 Columbia Ave Jersey City NJ 07307	E														
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C	V2	04	01	-	13	M	-	-	2	04	04	-	-	Brian Wierdak - 90 Columbia Ave Jersey City NJ 07307																																																																																	
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☒ Reportable No. 1446 ~~sup~~ P. 4 ~~neg~~ Report

NJTR-1 (R 4/10)

Police Copy

AFFIDAVIT OF SERVICE

STATE OF NEW JERSEY :
: S.S.
COUNTY OF BERGEN :

Dana Riccio, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides in New Jersey.


On January 15, 2019, deponent served with the within Notice of Filing and Notice of Removal via e-file on:

Joseph M. Simantov, Esq.
The Simantov Law Firm, P.C.
100 Jefferson Avenue, 3rd Floor
Elizabeth, New Jersey 07201
Attorneys for Plaintiffs

Hudson County Courthouse
595 Newark Avenue
Jersey City, New Jersey 07306


DANA RICCIO

Sworn to and subscribed before me
this 15th day of January, 2019


E. Michael Garrett, Jr., Esq. (8913)
Attorney at Law, State of New Jersey